

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MORRIS E. BROWN,

Defendant.

ORDER

10-cv-47-bbc

08-cr-134-bbc

On February 1, 2010, defendant Morris Brown filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that he was denied the effective assistance of counsel after he was indicted in this case for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1), and that he was given an illegal sentence. Defendant's motion was denied on February 18, 2011. On March 29, 2011, defendant filed a motion under Fed. R. Civ. P. 59(3), which was denied on March 31, 2011. On June 4, 2011, defendant filed a notice of appeal. Thereafter, defendant filed four motions to reopen and amend his § 2255 motion. Because his case was on appeal, this court had no jurisdictions to address the merits of his motion. Accordingly, all of defendant's motions to reopen were denied pending a

decision from the court of appeals. On April 5, 2011 the court of appeals issued an order denying defendant's appeal on the ground that defendant's Rule 59(e) motion was untimely, and should have been treated as a successive collateral attack and dismissed by the district court for lack of jurisdiction.

Now that the court of appeals has denied defendant's appeal, I will take up his motion to reopen and amend his § 2255 motion. Unfortunately for defendant, his motion must be denied for lack of jurisdiction. Section 2255 prohibits a defendant from filing a second or successive motion under § 2255 without certification by the court of appeals that the new motion contains newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court." Because this motion is another attempt to challenge his sentence, the court lacks authority to consider the claims raised in defendant's motion without certification by the court of appeals.

ORDER

IT IS ORDERED that defendant Morris Brown's motion to reopen and amend his

motion for post conviction relief under 28 U.S.C. § 2255 is DENIED for lack of jurisdiction.

Entered this 19th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge